

## **TR 177**

### **Facts**

Mr N, an Irish national and Mr B, a British national, are both currently residing in Zimbabwe. They were the shareholders of various companies involved in financial services (money remittance services) and technology services/ licencing including a company called C Ltd, a private company incorporated in South Africa. N and B each held 25% of the ordinary shares in C Ltd.

During the year 2014, N and B were approached by a private equity group called P who was interested in acquiring a stake in the businesses owned by N and B.

It was agreed between the parties before the acquisition took place that a separate holding company, H Ltd is established in Mauritius to consolidate and own all the financial services and technology subsidiaries that are involved in money remittance services owned by N and B. The parties also reached a consensus that there will be no existing liabilities at the level of H Ltd once consolidation of the subsidiaries is completed.

H Ltd was incorporated in Mauritius by N and B. H Ltd holds a Category 1 Global Business Licence and the shareholders were R Ltd and T Ltd, two companies incorporated in Nevis, each with a 50% ownership in H Ltd.

The ultimate beneficial owners of R Ltd and T Ltd are N and B respectively.

On 22 December 2014, M Ltd, a company holding a Category 1 Global Business Licence and the holding vehicle for P acquired a stake of 35.2 % in H Ltd from R Ltd and T Ltd for a total consideration of USD 14 million.

On 3 February 2015, N and B entered into a sale of shares agreement in terms of which they both sold their 25 % shareholding respectively in C Ltd to H Ltd. Since no payment was effected, the transaction was reflected in the accounts of H Ltd as a loan of ZAR 12,210,000 due to N and B. However, this transaction which took place after 22 December 2014, the date of acquisition of shares in H Ltd by P, was contrary to the consensus reached by all parties that no liabilities should exist at the level of H Ltd.

N and B now wish to cancel the loan between themselves and H Ltd by waiving the outstanding loan to H Ltd.

### **Points at issue**

Whether the waiver of the loan by N and B would constitute taxable income in the hands of H Ltd?

### **Ruling**

On the basis of facts provided, it is confirmed that the waiver of the loan would not constitute taxable income since the loan was taken for acquiring a capital asset in the form of investment in C Ltd.